IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.404 OF 1999
with
Civil Application No.6380 of 1999

Kondiba Ganpati Gavane and ors. .. Appellants.
Vs
Hariba Eknath Tupe and ors. .. Respondents.

Mr Manoj Chatage i/b Mr S.D.Dharmadhikari, for the appellants.

CORAM : D.B.BHOSALE,J.
DATE : 09.01.2007.

PC:

1. Heard the learned counsel for the appellants.

2. This appeal is by the original defendant nos 1,2,4,5 and 6 challenging the decree of partition. The only contention urged by the learned counsel for the appellants, assailing the judgments of the courts below, was that the suit ought to have been dismissed for nonjoinder of the necessary party. He submitted that one Dhondiba s/o Shahabai, one of the predeceased coparceners, was not joined as a party to the suit. I perused the judgments of the courts below and in particular paragraphs 17 and 18 of the judgment of the appellate court, wherein this submission has been considered. The courts below have recorded a categoric finding, based on the material on record, that Dhondiba, who claims to be the son of Shahabai who died in 1927,

was born in 1936 and, therefore, it cannot be said that he is a son of Shahabai. Moreover, Dhondiba was examined by the defendants in the present suit but still he did not claim any right whatsoever in the property, nor did he make an application for adding him as a party to the suit. keeping that in view and considering the findings of facts recorded by the courts below which, according to me, are based on the material on record and considering the extremely limited jurisdiction of this Court under section 100 of the Code of Civil procedure to disturb the findings of fact, I am not inclined to interfere in the instant appeal. The appeal accordingly fails and is dismissed as such. As a consequence thereof, the civil application stands dismissed.

(D.B.BHOSALE,J.)